

IN THE SUPREME COURT OF THE STATE OF NEVADA

OBDULIO RECINOS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53504

**FILED**

JUL 15 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

Appellant claims that the district court erred in denying his claim that his guilty plea was invalid because it was involuntary and unknowing. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. Hubbard, 110 Nev. at 675, 877 P.2d at 521. In determining the validity of a guilty plea, this court looks to the totality of the circumstances. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); Bryant, 102 Nev. at 271, 721 P.2d at 367. A petitioner is only entitled to an evidentiary hearing on claims supported by specific facts not belied by the record, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

First, appellant claims that his plea was invalid because trial counsel coerced him into pleading guilty. Specifically, appellant claims that trial counsel informed him that he had no defense, and that if he went to trial he would never get out, and therefore, coerced him into pleading guilty. Appellant fails to demonstrate that his plea was invalid. Candid advice about the possible outcome of trial is not evidence of coercion. Further, appellant acknowledged in his guilty plea agreement and/or during his plea canvass that he had discussed defenses with counsel, he was satisfied with counsel's performance, he was entering his guilty plea freely and voluntarily, and doing so was in his best interest. Moreover, appellant failed to state how additional trial preparation would have changed his decision. We therefore conclude the district court did not err in denying this claim without an evidentiary hearing.

Second, appellant claims that the district court erred in denying his claim that the district court coerced him into pleading guilty by stating he had until the afternoon to change his plea. Appellant fails to demonstrate that the district court's time limit rendered his plea invalid. When the time limit was announced, the parties had already concluded their negotiations, see generally Cripps v. State, 122 Nev. 764, 137 P.3d 1187 (2006) (prohibiting judicial participation in plea negotiations with one exception: the district court may indicate it is willing to accept a sentencing recommendation), and appellant fails to demonstrate how the time limit was coercive. Therefore, the district court did not err in denying this claim without an evidentiary hearing.

Third, appellant claims that the plea canvass was inadequate and rendered his plea invalid. Specifically, appellant claims that the district court did not advise appellant of the elements of the offense, ask

him if he understood the nature of the offense, ask him to admit to a factual basis, ask what caused him to plead guilty, address appellant's constitutional rights, ask him if was under the influence of drugs or alcohol, ask if he could read and write, or ask if he had adequate time to consult with counsel. Appellant failed to carry his burden in this regard. The elements and waiver of constitutional rights were set forth in the plea agreement. Further, appellant acknowledged reading, signing, and discussing the plea agreement with his counsel. The factual basis for the plea was set forth by trial counsel and appellant agreed to this factual account. Finally, appellant failed to demonstrate that he had inadequate time to consult with counsel. The plea was set to be taken in the morning on July 26, 2007. Appellant expressed reservations regarding the plea and the district court gave appellant nearly four hours to further discuss the plea with counsel. Therefore, the district court did not err in denying this claim without an evidentiary hearing.

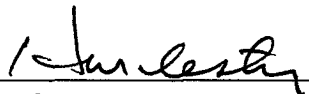
Finally, appellant claims that the district court erred in determining that he did not ask his trial counsel to file an appeal. Appellant fails to demonstrate that he requested an appeal. At the evidentiary hearing, appellant testified that before sentencing but after entering his plea, he requested that trial counsel file an appeal or "have this plea deal taken back." He also testified that he did not ask counsel after sentencing to file an appeal or otherwise express his dissatisfaction to trial counsel regarding his guilty plea or sentence.<sup>1</sup> Trial counsel

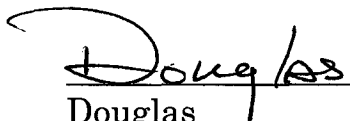
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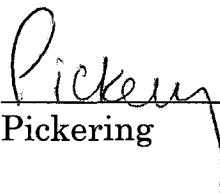
<sup>1</sup>Appellant's co-defendant, who entered his plea and was sentenced on the same days as appellant, made an oral motion to withdraw his plea  
*continued on next page . . .*

testified that he explained appellant's limited right to appeal and that appellant never asked him to file an appeal. Appellant failed to demonstrate by a preponderance of the evidence that he did, in fact, request an appeal. See Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Therefore, we conclude that the district court's findings were based upon substantial evidence and are not clearly wrong, Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994), and the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Kathy A. Hardcastle, District Judge  
Law Offices of Martin Hart, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

... continued

at sentencing. Appellant did not join in that motion nor did he otherwise express dissatisfaction with the plea during sentencing.